UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Criminal Action
	:	No. 1:23-cr-00081
v.	:	
	:	
HAILONG ZHU,	:	September 7, 2023
	:	2:23 p.m.
	:	
Defendant.	:	**EXCERPT**
	:	
.....	:	

TRANSCRIPT OF RULE 29 MOTION
BEFORE THE HONORABLE MICHAEL S. NACHMANOFF,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States:	UNITED STATES ATTORNEY'S OFFICE Alexandra Zoe Bedell, AUSA Stephanie Schwartz, AUSA 2100 Jamieson Avenue Alexandria, VA 22314
For the Defendant:	OFFICE OF THE FEDERAL PUBLIC DEFENDER Geremy Kamens, Federal Defender Nathaniel Wenstrup, AFPD 1650 King Street, Suite 500 Alexandria, VA 22314
	AFN LAW PLLC Angus Fei Ni, Esquire 504 2nd Ave 14th Floor Seattle, WA 98104
Also Present:	Mandarin Interpreters: Judith Shapiro Renee Wang

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(Continued)

Court Reporter: Diane Salters, B.S., CSR, RPR, RCR
Official Court Reporter
United States District Court
401 Courthouse Square
Alexandria, VA 22314
Email: Dianesalters.edva@gmail.com
Telephone: (301) 338-8033

Proceedings reported by machine shorthand. Transcript produced by computer-aided transcription.

(This portion of the jury trial proceedings commenced at 2:23 p.m.)

THE COURT: Does the defendant have a motion?

MR. KAMENS: We do, Your Honor. I've submitted a written motion, and I would like to speak briefly on it.

Rule 29 requires the Court to enter a judgment of acquittal if the evidence would not permit a rational jury to find guilt as to every element of the charged offense beyond a reasonable doubt. By definition, if the evidence would permit only a preponderance of the evidence with respect to all of the elements, that is not a sufficient basis upon which to rule for the government on a Rule 29.

I would like to speak about three elements that the government has to prove beyond a reasonable doubt: First, knowledge of the object fraud; second, agreement to commit the same crime as coconspirators; and, third, the object proved must satisfy the elements of a scheme to commit bank fraud.

With respect to knowledge of the fraud scheme, there is no evidence in this trial that Mr. Hailong Zhu had any contact with the fraudulent platforms that were used to accept investments from victims. He had no communications with victims. He had no communications about contacts with victims with other conspirators. There are no emails of bank information to be shared with victims from him. There's no admission that he knew where the money came from. This is not a money laundering case

in which willful blindness as to the unlawfulness of proceeds is a sufficient basis to find that the defendant has engaged in that prohibited conduct. This is a conspiracy to commit bank fraud in which the government must prove not only that Mr. Zhu knew about the object fraud, but that he agreed to participate in it. In this case, there is simply no evidence that Mr. Hailong Zhu knew anything about the scheme to obtain money from the victims. For that reason, the Court should grant the Rule 29.

A similar point is with respect to the requirement that the government prove that Hailong Zhu agreed to commit the same crime as his coconspirators. It is certainly true that the Court must consider the evidence at this stage on this motion in the light most favorable to the government. In considering the facts in that respect, the Court has certainly heard evidence that Mr. Zhu was involved in the opening of bank accounts based on companies that, in fact, had no business; that large amounts of money were deposited in those accounts; and that he made substantial withdrawals and helped to transfer that money, but none of that shows that he agreed to the fraud scheme engaged in by the individuals who stole money from victims. It is not enough for Hailong to agree to help them commit some crime. In other words, it is not enough if he believed he was committing money laundering if the others have agreed or are trying to commit another crime, the charged crime, which is conspiracy to commit bank fraud. They must show that Hailong agreed to that

same conspiracy to commit bank fraud, and there is nothing in this trial to show that he was a partner in that scheme to steal money from victims. The last --

THE COURT: I'm having trouble following that final -- maybe it's the way you're saying it, but the conspiracy is not to steal money from victims. That would be wire fraud. The conspiracy is to commit bank fraud, to obtain the property of banks; and we've had tons of briefing on this issue, and I'll hear from the government in a second, but I'm a little confused with your language.

MR. KAMENS: Let me be more clear with respect to what I'm specifically referring to, and that is the line of cases, starting with *Rosenblatt* from the Second Circuit in which one defendant engaged in fraud and obtained some fraudulent checks, and then obtained the help of his rabbi, Rosenblatt, to launder the proceeds of that fraud, but the rabbi who laundered the funds didn't know anything about the actual fraud that had produced the money. They were both charged with the conspiracy to defraud the United States.

THE COURT: Well, in that case, the rabbi thought that it was about evading taxes --

MR. KAMENS: Correct.

THE COURT: -- and so there was a question about what the object of the conspiracy was.

MR. KAMENS: Correct.

THE COURT: So, here, there aren't multiple objects. The government has elected to pursue solely bank fraud, so the question is, is there sufficient evidence in the record, taken in the light most favorable to the government, that there was an agreement between the defendant and others to commit the crime of bank fraud, to obtain bank property or property under the control and custody of the bank? So how do you respond to that argument?

MR. KAMENS: That argument is based on the fact that we have a difference of -- we differ on what bank fraud is, that is, that bank fraud is not money laundering. It is not engaging in bank transactions with the proceeds of criminal conduct. It is not engaging in fraud that also happens to involve a bank account. It is lying to a bank to get the bank to release money that is the bank's property or the property of another person's account. It is not what Mr. Zhu did, which is open up bank accounts, and the proceeds of anterior criminal conduct was funneled through those accounts. That is not bank fraud.

THE COURT: Well, it doesn't matter what Mr. Zhu did. It matters what the object of the conspiracy was --

MR. KAMENS: Absolutely.

THE COURT: -- what the coconspirators did; and what the coconspirators did would be attributable to Mr. Zhu even if he didn't do it himself or even if he wasn't directly aware of it.

MR. KAMENS: The precondition for attributing the

conduct of coconspirators to Mr. Zhu is his knowledge and agreement to what they're doing; that is, simply because Mr. Zhu agrees to help them engage in money laundering is not the same thing as conspiring with them to commit bank fraud. So the point of the argument is that there's nothing in this trial, no evidence, to show that Mr. Zhu ever knew the source of the funds going into the accounts. That is a necessary precondition to finding him guilty of conspiring to commit bank fraud.

Does the Court follow my argument, or am I not being clear enough?

THE COURT: No, I follow your argument.

MR. KAMENS: The last argument is that this is not a bank fraud scheme that the government has proved. The simple test for bank fraud with respect to the victims that testified in this case is, Did Marisol Chavez and did Kwadwo Danso-Fordjour authorize the wires that they sent? If so, that's not bank fraud. Bank fraud does not encompass frauds to have people write checks or wire money or otherwise send monies to scammers. Banks can't prevent people from doing foolish things with their money. The fact that these individuals decided, even if they were deceived by scammers, to send their own money, to wire their money, that is not bank fraud. Bank fraud requires a lie to the bank that causes the bank to release the money, and it is different than lying to a victim to get the victim to send money to the scammer. It's a very straightforward and simple argument,

and it's been accepted by a number of courts. What the government has here -- essentially, everything that the government has presented -- is a fraud scheme that does not constitute bank fraud. The one thing they pointed to is efforts to get victims to take out personal loans, and that also, in this case, is not evidence of bank fraud. Loan proceeds, once they're disbursed to the borrower are no longer property of the bank. And if the fraudster obtains money that has been disbursed to the borrower by the bank pursuant to a personal loan, that, again, is not bank fraud because they are not stealing bank property.

The language here is difficult to parse because when we're talking about bank property, it's easy to think it's just money in a bank account, that that's bank property; but the thing is it doesn't encompass -- that is, specifically, bank fraud does not encompass -- anything involving a bank account that is connected to a crime. It requires, specifically, lies to a bank to get the bank to release its money or someone else's money; like, for example, a mortgage loan application that has a lie. That is material. That would be something that would cause the bank to give its own money based on a lie. That is bank fraud.

Another clear example -- it's the one talked about by Scott Golladay -- is a $100,000 fraudulent check. The bank doesn't know it's fraudulent; deposits it into a customer's account; and within one business day, because of the UCC, the bank has to give that money or make it available for withdrawal

to the customer. The customer takes out the money, $100,000, and the bank learns three days later the check is fraudulent. The customer no longer has the money. The bank has to write off that loss. That is bank fraud. It's a lie in the form of that fraudulent check to the bank to get the bank to release funds.

What we have here is a scheme to get individuals to go on cryptocurrency spoofed platforms and then decide to wire their own money to the scammers. That is not bank fraud. That is specifically what *Loughrin*, the Supreme Court case, says is not bank fraud, a scammer who gets a valid check or a valid form of payment from the victim; and that's why it's that simple test I propose here: Is the money that was provided by Marisol Chavez and Kwadwo Danso-Fordjour, are those valid wires? And they are because they were authorized by those individuals. It is fraud; there's no doubt about that; it's just not bank fraud.

THE COURT: Thank you.

MS. BEDELL: Your Honor, the standard here is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. The government gets the benefit of all reasonable inferences from the facts proven to those sought to be established, and the jury, not the reviewing court, weighs the credibility of the evidence and resolves any conflict of the evidence presented.

So in this case, Your Honor, I think there is ample

evidence to support a conviction for bank fraud -- a conspiracy to commit bank fraud here.

I would like to start with what the defendant agreed to. And so -- and I do want to be clear: We are not saying that his lies in opening accounts constitutes bank fraud in and of themselves, but they certainly demonstrate a willingness to lie to banks, and that is a critical part of the intent that needs to be proven.

Additionally, the defendant himself actually did engage in acts of bank fraud by directly lying to banks in order to obtain money from them. So a very clear example is the transaction that happened on December 10th when he attempted to withdraw just short of $75,000 from his personal Bank of America account that had been -- the transfer from Robert Kessler on December 9th. And in this transaction, when he attempted to withdraw the money, he told the bank that this was money that he had received from a remodeling contract. And we heard evidence that, in fact, Mr. Kessler lived in Alaska and he had reported being a victim; he submitted a hold harmless request; that money was returned to him. So those were very clearly not remodeling funds.

THE COURT: But how are they the funds of the bank? In other words --

MS. BEDELL: So, Your Honor --

THE COURT: You're absolutely right that the Court will

take, and must take, the facts in the light most favorable to the government, but explain to me what facts there support a false statement to the bank to obtain the bank's property.

MS. BEDELL: So, Your Honor, the statute requires that you can either be trying to obtain the property of the bank or property in the custody of the bank. So as an initial matter, this falls most easily under property in the custody of the bank.

THE COURT: But is there any case that you've shown me that supports that theory? Because that theory, it strikes me, would mean that all customers' funds in the bank are under the custody of the bank. That's the whole nature of having your money in the bank, right? You don't have it physically; the bank has it, but it's your money. So if the bank fraud statute were intended to cover that, it would mean all accountholders' funds would be subject to bank fraud if somebody was trying to get the accountholders' money. But isn't that the essence of all the other fraud statutes you could have brought, including wire fraud, which is trying to get a customer's money, not the bank's money?

MS. BEDELL: No, Your Honor. This is very much bank fraud because it is making misrepresentations to the bank in order to get money out of the bank's custody. And so it has to be material. So I think maybe the point you're getting at is if I, like, you know -- I think Mr. Kamens had made an example of I say it's for my bills, but, really, it's my golf tee time. The

bank is not going to care about that. But we heard ample evidence about why this was a material misrepresentation and how banks are trying to determine whether these withdrawals are legitimate, and using this information for that purpose --

THE COURT: You mean because of the anti-money laundering laws and bank secrecy laws, that they have an obligation to look into why certain money is coming and going? Is that what you're talking about?

MS. BEDELL: It's not just their obligation, but the fact that they do it, Your Honor, and that they are evaluating this information and using it in making decisions about whether to release the money.

THE COURT: But it's not their money, is it?

MS. BEDELL: Your Honor, it does not have to be their money, but I will put a pin in that and say *U.S. v. Shaw* does say that banks have an interest in accounts that -- in funds in an account. They do have a property interest there.

And the other thing, Your Honor, is that it's also not -- I think this is the other point, is that you had said: It is my money I'm trying to get out of the account. And maybe in some instances if you're trying to withdraw from your own account, but the fact is that this wasn't Mr. Zhu's money. It was sent to him under fraudulent pretext. And the law is also very clear that you don't have an unfettered right to money that you've gotten through fraud and theft. So the idea that the UCC

applies and that he can just pull this money out because it's in his bank account, that's, first of all, not a reflection of the reality. We saw numerous instances where the defendant and his coconspirators were not able to access the money that was in their bank accounts, and that's because they don't have an absolute right to it.

THE COURT: All right. I guess I'm focused on trying to understand what the government's theory is. Is it that because the banks have the ability to freeze, either restrict or suspend and then close an account, that that gave them control over the accounts; and, therefore, any lies connected with trying to get that money released constitute bank fraud?

MS. BEDELL: Yes, Your Honor.

THE COURT: Is that your theory?

MS. BEDELL: It constitutes efforts in this case to obtain the funds from the custody of the bank, and those were lies directly made to the bank here. So we're not even dealing with the situation of it going through an intermediate person; and that's where the cases are much more hesitant and are trying to -- you know, my fake purse that I think is real, that's not bank fraud because there's no direct con- -- there's no direct relationship between the misrepresentation and the bank. But, here, this is -- the plain text of the statute is that it can be money in the custody of the bank, and it has to be misrepresentations. And, again, I think Mr. Kamens and I

disagree about whether the misrepresentations have to go to the bank, but in this case, they absolutely have. And so that is 100 percent classic bank fraud. And I think Mr. Kamens has argued that because it's already in his bank account, you're not obtaining it, but the reality is very different. As we said, we saw numerous instances where they were not able to get the money out of the account. And to think that the goal of the conspiracy was to say, Let's just get the money into Hailong Zhu's account, mission accomplished, we're done here, that was clearly not the goal or the purpose of the conspiracy. The goal was to continue moving it on. And so that's why we saw all of those transfers sending the money overseas, and it's why we saw the coconspirators -- Mr. Wong, Small 7, Nikki -- going to great lengths to try to get this money out of these accounts after they've been restricted and continue moving them on. This was a massive focus of the conspiracy, and it involved misrepresentations by Mr. Zhu and his conspirators at nearly every step, and that's why it constitutes bank fraud, Your Honor.

THE COURT: All right. Are there any other cases other than *United States v. Shaw* that address this issue of the custody and control in the government's theory?

MS. BEDELL: I'm sure. I will be honest, Your Honor, I had not really thought -- it's the plain text of the statute, so that it does say in the statute that it is efforts to obtain money from the custody of a bank. So I have not looked for

specific case law that would support that point because I hadn't understood Mr. Kamens to be arguing that. So I think I would have to go do additional research for that specific -- I'm certainly not saying there aren't cases. I just don't necessarily have them at my fingertips right now. Frankly, some of the cases that we have looked at and discussed probably do cover this, and I would just need a minute to -- or more than a minute -- but I would need to go through that. That's just not something that I had been totally aware was at issue given that it is the plain text of the statute.

THE COURT: And tell me again how you distinguish between that theory of custody and control and bank fraud then applying to every effort to make a false statement to obtain the money that's already in accountholders' accounts.

MS. BEDELL: Well, Your Honor, it seems like you're concerned about situations where just an ordinary bank customer is trying to get money out, and so I'm struggling to understand exactly what this hypothetical looks like, but I do keep coming back to materiality here because it is very difficult for me to imagine what the sort of general misrepresentation that, you know, me as a law-abiding citizen is going to make to my bank in trying to get money out. So, you know, I would -- like an ATM transaction is not necessarily automatically bank fraud if it doesn't involve a misrepresentation; and then, again, it has to be a material misrepresentation. So that, to me, it strikes me

as a limiting factor, is that I'm not sort of seeing cases where we are charging or considering or trying to protect against someone paying their tea time rather than paying their bills or something like that. I don't think that that would fall into the category of material.

THE COURT: Anything else?

MS. BEDELL: Yes, Your Honor. I would like to address the loan aspect of the conspiracy, but if that's something that -- if that's helpful, because we do believe -- actually, we do believe both the efforts to obtain loans absolutely constitute bank fraud; and, there, we do see misrepresentations going to the bank. We looked at Exhibit 1-4 where Mr. Danso-Fordjour represented that he was not taking out the loan for the purpose of investment, which was exactly what he believed he was taking out the loan for. And then, also, this is very -- as an identical case to *Chittenden*, wherein, there, there was no misrepresentation that went directly to the bank, but, nonetheless, the misrepresentations induced the victims -- excuse me -- induced the intermediary to take out a loan that was immediately transferred, and that was a direct and close connection. And that's exactly what happened here. I mean, there's absolutely no basis for any of these people taking out a loan other than being induced.

The other part of that -- and Mr. Kamens has tried to present this as a third conspiracy -- but the efforts to get the

money from the victims that wasn't bank loans. First of all, that's an integral part of this conspiracy. It's not like there's any victim, whether we were allowed to put their testimony on or not, that out of nowhere, someone said, You should take out a loan. This is all part of the same effort. But, in addition, those non-loan transfers that they made also frequently involved misrepresentations. We heard Mr. Danso-Fordjour testify that he invented reasons for sending, in the "purpose"; and we saw in Exhibit 3-3, which was a text between Marisol and Daniel, You don't need to worry that the bank will refuse you because you can tell the bank that it is your friend. Basically, you don't have to tell the bank the real purpose of the transfer; tell them something else and the transaction will go through. And we saw numerous transactions that were labeled "construction," home goods -- that's not an exact one -- but it was construction, payment for supplies, things that were very clearly not the actual purpose of these payments. And we heard testimony from Mr. Campbell and Mr. Golladay that these representations are material. So we absolutely believe that that is also -- and we think the evidence supports -- that that is also bank fraud.

And then to the final point that -- maybe not the final, but one other point that Mr. Kamens made here is those cases -- and I think you picked up on this, Your Honor -- but the *Rosenblatt* cases have found that you have to have agreed to

commit the same offense; and everyone here is committing bank fraud, and this is an integrated and coordinated conspiracy to get the money out of victims and the banks into the intermediary accounts and overseas. And everyone at all the different stages -- they may be committing other crimes, too, which happens frequently -- but they are definitely committing bank fraud. And the law is very clear that once Mr. Zhu has agreed to commit bank fraud, he does not have to know the details of the scheme; he does not have to know every participant; he does not have to know every act. And, in fact, in *United States v. Mora*, the Fourth Circuit specifically says he does not need to know the organization of the scheme.

In Rosenblatt -- and there's a whole line of cases -- those are all instances where, as you pointed out, one person was committing tax evasion, in his mind, and the other was committing some sort of fraud. But, here, everyone has agreed to commit bank fraud. So that is what we have to prove, and that is what the evidence supports here, Your Honor.

THE COURT: Anything else?

MS. BEDELL: Not unless there are other questions, Your Honor.

THE COURT: Thank you.

MR. KAMENS: May I respond briefly?

THE COURT: Yes.

MR. KAMENS: Your Honor, banks put in place provisions

to protect their customers. So if I go to a bank and say I'd like to withdraw my money, and I'm really intending to invest in cryptocurrency, the bank may say, That's not a good idea; we're not going to let you do that. But it's my money. If I say, then, Well, actually, I'm going to put it under my mattress, and they give me the money, I can do whatever I want with it. It is my money. The fact that I'm invading those internal controls to protect the customer is not bank fraud.

The government's theory that they've just announced is a theory that the bank fraud statute is a criminal banking statute; that drug dealers who deposit money in banks commit bank fraud when they withdraw money or move it and don't tell the bank that they're actually drug dealers. That is not bank fraud. The government's argument also makes bank fraud never-ending. We have argued about this. We've cited that --

THE COURT: Well, how do you respond to the argument about the custody and control? There seems to be a fundamental difference over the view of what "custody and control" means. And so if a bank doesn't have a property interest, generally, in the money that its accountholders put there, but has certain obligations and can take certain actions when, for example, they think there's fraud going on or they think that they might end up being liable, so that they have to restrict an account or suspend it, does that not fall under the definition of bank fraud?

MR. KAMENS: It doesn't if the action is authorized by

the accountholder. So banks have a property interest in the money that they have in their accounts, but that property interest is always subsumed to the interest of the accountholder, so that the two --

THE COURT: Well, in this case, the accountholder is alleged to have been perpetrating a fraud.

MR. KAMENS: Absolutely, but that comes down to whether people who engage in criminal conduct and deposit proceeds from criminal conduct in banks, whether that constitutes bank fraud, and it doesn't.

Let me explain the response in two ways: One, it comes down to, What is the occasion by which a person obtains someone else's property? Bank fraud is committed when you obtain the property of the victim. It is not when individuals engage in money laundering or transactions with the proceeds of that crime. That is not the occasion by which they obtain the money from the victim. Every wire fraud, bank fraud, mail fraud statute is about obtaining property from the victim; and this case, it has always seemed has been about the fraud that was perpetrated on these victims. But now the government has completely changed what they're saying, and they're saying, essentially, that the movement of those proceeds without telling the bank about what this was actually about constitutes bank fraud. And there's not a single case that supports that theory. We have argued about it. We've cited the Seventh Circuit case -- I think it's called

Anderson -- which says that the reason you can't call this a fraud every time they move the money is because that would make the fraud never-ending as long as the defendants have that money and move it around.

The fraud occurs when it's stolen from the victim, not when they're moving money between accounts. And so, again, the Court's question to the government was very apt, and that is, Is there any case that supports the theory that the bank fraud statute completely subsumes money laundering, it encompasses depositing proceeds of a crime, and then trying to get that money to another account? There isn't a case that says that. Instead, what bank fraud or wire fraud or mail fraud is is stealing money from a victim. Everything that happens after the money is obtained from the victim is not the fraud itself. It may be other crimes. It may well be money laundering, which is exactly what the conduct that has been alleged in this case or presented, the evidence, with respect to Mr. Zhu would establish in the light most favorable to the government, but that is not bank fraud. Otherwise, essentially, bank fraud is everything involving the deposit of money from the criminal activity.

THE COURT: Do you wish to be heard?

MS. BEDELL: Briefly, Your Honor.

THE COURT: All right.

MS. BEDELL: Again, bank fraud is everything if you omit all the other elements. And, again, there's plenty of ways

to commit money laundering that don't involve bank fraud, but when you are lying and making material misrepresentations to the bank, that is the critical defining element here that distinguishes it from just trying to conceal your money.

And, again, I think we've debated *Anderson* extensively, but *Anderson* stands for the fact -- the specific facts of that case, to be clear, the money had been at rest for ten years. Though she made another transfer that the court determined completely unrelated to the fraud and the scheme that was at issue in that fraud, they concluded that transfer was not bank fraud; and that seems entirely reasonable given the particular facts of that case, but it is nothing to say about whether that can never -- a transfer between accounts can never be bank fraud.

And then, Your Honor, we would ask you to delay ruling until after the jury has returned a verdict. I will put that on the record. Thank you, Your Honor.

THE COURT: Thank you.

Well, these issues are not being raised for the first time. They've been raised throughout this case, from the first indictment, to the superseding indictment, to the motion to dismiss, to the motion *in limine*, and now to the Rule 29. I appreciate the efforts of counsel to educate the Court. I appreciate the submission of the written motion for judgment of acquittal.

I will say that it is a difficult position to be in

because the government doesn't have the opportunity to submit a full written position; but as I said, there is plenty of evidence and law in the record based on the submission of both sides.

I'm going to take a brief recess and then we will reconvene. Court will be in recess.

(Whereupon, a recess in the proceedings occurred from 2:55 p.m. until 3:21 p.m.)

MR. KAMENS: Your Honor, can I make one small point that I forgot to make?

THE COURT: All right.

MR. KAMENS: This is in our written pleading, but with respect to the government's custody and control theory, all of the conduct -- the agreements, the misrepresentations they point to -- happened in California. If that conduct, which is equivalent to money laundering, is the basis for the government's custody and control bank fraud theory, it is just as subject to the dismissal the Court already entered in this case with respect to the money laundering charge.

THE COURT: Thank you.

This matter comes before the Court on Defendant's motion for judgment of acquittal pursuant to Rule 29, and the Court must determine whether, viewed in the light most favorable to the prosecution, there's substantial evidence to support a guilty verdict in this case. Substantial evidence is evidence that's sufficient for a reasonable juror to find proof beyond a

reasonable doubt of each element of the charged offense.

The indictment, the superseding indictment, charges one count of conspiracy to commit bank fraud. It does not charge multiple-object conspiracy; it does not charge conspiracy to commit money laundering, or conspiracy to commit wire fraud. The elements of conspiracy to commit bank fraud are as follows: Two or more persons agree to commit bank fraud; the defendant willfully joined the conspiracy with the intent to further its unlawful purpose. Bank fraud, which was the object of the alleged conspiracy, has three elements: First, that the defendant knowingly executed or attempted to execute a scheme or artifice to obtain any monies, funds, credits, assets, or other property owned by or under the custody or control of a financial institution by means of material false or fraudulent pretenses, representations, or promises; two, the defendant did so with the intent to defraud; and, three, the financial institution was then federally insured. Now, there's no dispute that the banks in this case that have been identified were federally insured; and, really, there's no dispute that there was a scheme to defraud. The cryptocurrency scheme was a wide-ranging and clear effort to obtain money through false pretenses. However, there is no evidence, even in the light most favorable to the government, that the defendant knew of the cryptocurrency scheme; that he knew of the websites or the platforms that were used; that he knew of Daniel or Rachel or the others who posed as friends or

others who lured the victims of that scheme; or that he even knew the source of the money that came into his accounts. There's no evidence that Joseph Wong or Nikki or Little 7 ever explained or shared the purpose or means of the conspiracy to the defendant, that it was to defraud victims of their money. More specifically, there's no evidence that there was a meeting of the minds as to the object of the conspiracy that the defendant is charged with, even taking the evidence in the light most favorable to the government. There's simply nothing in the record that there was an agreement to defraud banks of their property or property under their custody and control.

Loughrin makes clear, as do many other cases, including the *Davis* case, that not every false statement or lie to a bank is bank fraud, and not every effort to get victims to part with their money is bank fraud, even if a bank is involved. Here, there's no evidence that the money from the victims of the cryptocurrency scheme involved the bank's property or put the bank at risk in any way or implicated property under the control of a financial institution. The acts to restrict or suspend the accounts after the fraudulent scheme had obtained the funds cannot support a bank fraud theory. And, in fact, there's no evidence that Ms. Chavez, for example, ever got a loan. She used her own money and wired it as part of the fraud; and Mr. Danso-Fordjour, likewise, used his own money, for the most part, with the exception of the one loan that he sought from SoFi

Bank, but his statements to the bank, even taking that in the light most favorable to the government, cannot support a theory of bank fraud here. They're simply too attenuated to be attributed to the defendant in this case.

Now, the Court has no doubt that the government has established many crimes were committed by the codefendants in this case. There's no doubt as well that the defendant here was taken advantage of in many ways by the codefendants, as recognized by the agents themselves. Whether the defendant is guilty of other crimes not charged in this indictment is not for the Court to say and not before the Court, but the Court finds that, pursuant to Rule 29, there's insufficient evidence to let this case go forward and go to the jury; and, accordingly, the motion for judgment of acquittal is granted. And I don't do that lightly, and I appreciate the efforts that all counsel have devoted to this case, but there's simply no way for the Court to reach another decision, and so this matter is dismissed pursuant to Rule 29.

I will bring in the jury and advise them that the matter has been resolved and that they are discharged from further responsibilities in this case.

(This portion of the jury trial proceedings concluded at 3:28 p.m.)

* * * * *

CERTIFICATE OF REPORTER

I, Diane Salters, hereby certify that the foregoing transcript is a true and accurate record of the stenographic proceedings in this matter.

/s/ Diane Salters

Diane Salters, CSR, RCR, RPR
Official Court Reporter